MONTANA LEGISLATIVE HISTORY

Chapter 190 1981

Bill HB 537 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) H 2/5 ___C

V 2/16 ___C

_____ ___C

_____ ___C

Date Out _____ ___C

S. Committee on Judiciary

Hearing Date(s) H 3/16 ___C

V 3/17 ___C

_____ ___C

_____ ___C

BEST COPY AVAILABLE

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

INTRODUCED: 1/28
REFERRED TO COMMITTEE ON JUDICIARY: 1/28
HEARING: 2/5
REPORT: DO PASS, 2/11
2ND READING: 2/14 YEAS: 85; NAYS: 1
3RD READING: 2/17 YEAS: 98; NAYS: 0

TRANSMITTED TO SENATE: 2/17
REFERRED TO COMMITTEE ON JUDICIARY: 2/18
HEARING: 3/11
REPORT: 3/16, BE CONCURRED IN
2ND READING: 3/18, BE CONCURRED IN
3RD READING: 3/20, YEAS: 48; NAYS: 0

RETURNED TO HOUSE: 3/20
TRANSMITTED TO GOVERNOR: 3/26
ACTION: SIGNED, 3/30
CHAPTER 188

535—HUENNEKENS—TO AMEND THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY REQUEST THE PROSECUTING ATTORNEY TO REPRESENT THE SUPPORT OBLIGEE.
INTRODUCED: 1/28
REFERRED TO COMMITTEE ON JUDICIARY: 1/28
HEARING: 2/5
REPORT: DO PASS, 2/16
2ND READING: 2/19 YEAS: 84; NAYS: 0
2ND READING: 2/24 YEAS: 98; NAYS: 1

TRANSMITTED TO SENATE: 2/24
REFERRED TO COMMITTEE ON JUDICIARY: 3/2
HEARING: 3/16
2ND READING: 3/19, BE CONCURRED IN
3RD READING: 3/21, YEAS: 48; NAYS: 0

RETURNED TO HOUSE: 3/21
TRANSMITTED TO GOVERNOR: 3/26
ACTION: SIGNED, 3/30
CHAPTER 189

536—HUENNEKENS—TO AMEND THE UNIFORM PARENTAGE ACT....
INTRODUCED: 1/28
REFERRED TO COMMITTEE ON JUDICIARY: 1/28
HEARING: 2/5
REPORT: DO PASS, 2/16
2ND READING: 2/19, YEAS: 85; NAYS: 0
3RD READING: 2/24, YEAS: 92; NAYS: 4

TRANSMITTED TO SENATE: 2/24
REFERRED TO COMMITTEE ON JUDICAIRY: 3/2
HEARING: 3/16
REPORT: 3/26, BE CONCURRED IN
ON MOTION, 3/27, REREFERRED TO COMMITTEE ON JUDICIARY
BILL DIED IN COMMITTEE

537—HUENNEKENS—TO PROVIDE A 5-YEAR STATUTE OF LIMITATIONS FOR ACTIONS BASED ON A STATUTORY DEBT CREATED BY THE PAYMENT OF PUBLIC ASSISTANCE.
FISCAL NOTE: REQUIRED
INTRODUCED: 1/28
REFERRED TO COMMITTEE ON JUDICIARY: 1/28
HEARING: 2/5
REPORT: DO PASS, 2/16
2ND READING: 2/19 YEAS: 87; NAYS: 0
3RD READING: 2/24 YEAS: 89; NAYS: 9

TRANSMITTED TO SENATE: 2/24
REFERRED TO COMMITTEE ON JUDICIARY: 3/2
HEARING: 3/16
REPORT: 3/17, BE CONCURRED IN
2ND READING: 3/19, BE CONCURRED IN
3RD READING: 3/21, YEAS: 48; NAYS: 0

RETURNED TO HOUSE: 3/21
TRANSMITTED TO GOVERNOR: 3/26
ACTION: SIGNED, 3/30
CHAPTER 190

HB 538—HUENNEKENS—TO PROVIDE A 5-YEAR STATUTE OF LIMITATIONS TO ENFORCE THE PROVISIONS OF TITLE 15, CHAPTER 31, MCA, RELATING TO THE CORPORATE LICENSE TAX....
FISCAL NOTE: REQUIRED
INTRODUCED: 1/28
REFERRED TO COMMITTEE ON JUDICIARY: 1/28
HEARING: 2/5
REPORT: DO NOT PASS AS AMENDED, 2/16
REPORT: ADOPTED, 2/17
BILL KILLED: 2/17, YEAS: 81; NAYS: 11

MOTION, 2/18, TO RECONSIDER ACTION OF YESTERDAY IN ADOPTING ADVERSE COMMITTEE REPORT. MOTION CARRIED.
ON MOTION, 2/18, RETURNED TO COMMITTEE ON JUDICIARY FOR PURPOSES OF AN AMENDMENT.
REPORT: DO PASS AS AMENDED, 2/20
2ND READING: 2/23, YEAS: 82; NAYS: 11
3RD READING: 2/25, YEAS: 89; NAYS: 5

TRANSMITTED TO SENATE: 2/25
REFERRED TO COMMITTEE ON JUDICIARY: 3/3
HEARING: 3/19
REPORT: 3/24, BE CONCURRED IN, AS AMENDED
2ND READING: 3/27, BE CONCURRED IN
3RD READING: 3/28, YEAS: 47; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 3/28
2ND READING: 4/8, YEAS: 83; NAYS: 0
3RD READING: 4/9, YEAS: 96; NAYS: 1

TRANSMITTED TO GOVERNOR: 4/13
ACTION: SIGNED, 4/17
CHAPTER 408

HB 539—HUENNEKENS—TO LIMIT TAXABLE VALUE ON RESIDENTIAL PROPERTY.
FISCAL NOTE: REQUIRED
INTRODUCED: 1/28
REFERRED TO COMMITTEE ON TAXATION: 1/28
HEARING: 2/9
REPORT: DO NOT PASS, 2/12
SUBSTITUTE MOTION, 2/13, THAT THE BILL BE PRINTED AND PLACED ON 2ND READING. MOTION PREVAILED, YEAS: 55; NAYS: 39

HOUSE BILL NO. 537

INTRODUCED BY HUENNEKENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

January 28, 1981	Introduced and referred to Committee on Judiciary.
January 31, 1981	Fiscal note requested.
February 5, 1981	Fiscal note returned.
February 16, 1981	Committee recommend bill do pass. Report adopted.
February 17, 1981	Bill printed and placed on members' desks.
February 19, 1981	Second reading, do pass.
February 20, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 89; Noes, 9. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 17, 1981	Committee recommend bill be concurred in. Report adopted.
March 19, 1981	Second reading, concurred in.
March 21, 1981	Third reading, concurred in. Ayes, 48; Noes, 0.

IN THE HOUSE

March 23, 1981

Returned from Senate.
Concurred in. Sent to
enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 537

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A 5-YEAR STATUTE OF LIMITATIONS FOR ACTIONS BASED ON A STATUTORY DEBT CREATED BY THE PAYMENT OF PUBLIC ASSISTANCE; AMENDING SECTION 27-2-211, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-2-211, MCA, is amended to read:

"27-2-211. Actions to enforce penalty or forfeiture or other statutory liability. (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud."

-End-

HB 537

STATE OF MONTANA

REQUEST NO. .....

FISCAL NOTE

Form BD 15

In compliance with a written request received February 3, 19 81, there is hereby submitted a Fiscal Note for House Bill 537 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

This proposal would create a five year statute of limitations on actions to enforce a statutory debt created by the payment of public assistance.

IMPACT

It is impossible to determine the fiscal impact of this proposal. There is an increasing number of statutory debts created by payment of public assistance, (for example: AFDC) while the number of individuals working in the collections area has remained relatively fixed. The result is a growing backlog of cases in each of which an action must be brought within two years or the power to collect the debt is lost. A debtor has an opportunity to avoid his debt simply because his case is not processed in a timely fashion. The extension of the length of the period would make this outcome less likely.

PREPARED BY THE DEPARTMENT OF REVENUE

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-5-81

JUDICIARY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
537	Providing a 5-year statute of limitations for actions based on a statutory debt created by the payment of public assistance.	1/28/81	Huennekens	2/5/81	Do Pass 2/16/81	2/16/81
538	Proving a 5-year statute of limitations to enforce the tax and license laws admin. by Dept. of Rev. subject to exceptions for specific statutes of limitations.	1/28/81	Huennekens	2/5/81	Do Not Pass as Amended 2/16/81	2/16/81
		2/17/81			Do Pass as Amended 2/20/81	2/20/81
545	Amending section 7-32-4114, MCA, guaranteeing a member of a policeman's family the right to participate in political activity.	1/28/81	Sivertsen	2/4/81	Do Pass as Amended 2/16/81	2/16/81
546	Revise motor vehicle mand. liability protection law by requiring cert. of possession of ins. & carrying of an ins. card issued by ins. carrier. Removing motorcycles	1/28/81 exempt.	Pistoria	2/3/81	Do Pass as Amended 2/17/81	2/17/81
571	Providing optional annual payments for location of a facility on a landowner's property under Major Facility Siting Act based on fair market rental value.	1/29/81	Ernst	2/9/81	Do Not Pass 2/9/81	2/9/81
590	Revise the Montana Unfair Trade Practices & Consumer Protection Act of 1973.	1/31/81	Waldron	2/9/81	Do Not Pass as Amended 2/13/81	2/13/81

THE MINUTES OF THE MEETING OF THE HOUSE JUDICIARY COMMITTEE
February 5, 1981

The House Judiciary Committee was called to order by CHAIRMAN KERRY KEYSER at 8:00 a.m. in Room 437 of the Capitol. REP. IVERSON, REP. MATSKO, REP. DAILY, REP. SHELDEN were all excused absences during roll call, but were in attendance later during the meeting. JIM LEAR, Legislative Council was also present.

HOUSE BILL 534 REP. HUENNEKENS, chief sponsor, stated the bill's purpose is to clarify the laws relating to administrative enforcement of support for dependent children. The general feeling of the public concerning people who are on welfare is they are a burden. The primary people who are on welfare, however, are there because of disabilities. They do not necessarily want to be in that situation.

In 1975, the federal government passed a bill which provided a measure to reduce money to these families with one spouse. It required the state to pursue the spouses that had left to provide support for the children. There is a tendency for the non-supporting spouse to leave and not pay. Those that are apprehended do pay. If the state pursues these matters part of the money goes to the mother, part to the state and part to the county for reimbursement of money paid.

The program has worked successfully. In House Bill 534 there are a few minor corrections. Page 3, when the original bill was reprinted "order" was left out. Page 5, is all current law. A statement is added that the debtor is entitled to a fair hearing.

MIKE GARRETY, Department of Revenue, was in favor of the bill. It effects title 40 chapter 5. The first correction is a housecleaning matter. These amendments came about because of the department's decision to inform the defendant of a court order administration as well as a noncourt order. The debtor is entitled to a fair hearing. EXHIBIT 1 was given.

There were no further proponents.

There were no opponents.

REP. HUENNEKENS closed the bill.

REP. HANNAH asked how this bill would accomplish the purpose.

REP. HUENNEKENS replied a process has to be completed. The department has to file, then a court order is made demanding the payment be made. Part of the debtor wages may be retained for payment if necessary.

GARRETY stated a fair hearing for the debtor is one way to keep state agencies honest. A fair hearing is given whether notice is given or not. This will help avoid problems of the department.

There was no further discussion on House Bill 534.

of knowing the history of diseases, etc. from the father that is handed down to the child. If the father pays for three years not by court order then stops paying, he gets off free for the remaining 15 years.

There were no opponents.

In closing, REP. HUENNEKENS stated this involves saving state money and providing justice and morality. It is worth continuing to pursue.

REP. BENNETT asked how do you prove alleged paternity. GARRETY stated there are blood tissue type tests that are 99% accurate. A common law marriage is also used as proof when necessary.

REP. YARDLEY said the law as currently stated the three year limitation had a definite purpose at the time. Without it someone 5 to 10 years lated can come in and say you are the father.

GARRETY stated the blood testing is very accurate. A child has the same blood type throughout his life.

YARDLEY stated he thought the blood tests could only determine if you are not the father. GARRETY replied the tests have improved greatly. They have established breaking down the blood tissue type into some 80 types of coding. BULGER stated this test was developed for kidney donors. One person out of 1,000 has the same blood type.

There was no further discussion on the bill.

HOUSE BILL 537 REP. HUENNEKENS, chief sponsor, stated the purpose of this bill is to provide a 5-year statute of limitations for actions based on a statutory debt created by the payment of public assistance.

MIKE GARRETY, Department of Revenue, gave EXHIBIT 4 to the committee. Sections 53-4-248 and 40-5-221 create a cause of action in the name of the state for public assistance when it is paid for support of a minor child. Section 27-2-211 imposes two years statute of limitations. House Bill 537 would amend so a five year statute of limitations would be imposed. When fraud is involved, the statute of limitations would not be in effect until the fraud was discovered. In many instances the Department runs behind in finding a defendant.

There were no further proponents.

There were no opponents.

REP. HUENNEKENS closed the bill.

REP. HANNAH asked if a person goes to welfare or public assistance for help and later does not require the help, would he be required to pay back the money. GARRETY referred to section 53-4-248. A

debt continues to run and at a later date could be held against the person.

REP. HANNAH felt this was inconsistent with House Bill 536.

REP. EUDAILY questioned how this would apply in a deceased person's case. GARRETY stated in those cases most of the action is completed within two years. REP. EUDAILY stated it looked like this bill was being opened to all types of cases. GARRETY replied the law of probate would control it.

REP. CURTISS asked if the money recovered goes to the general fund.

GARRETY was not sure but he thought the monies recovered would go through SRS back to the general fund.

REP. KEYSER asked if this bill would not have a statute of limitations as far as fraud is concerned until it is discovered. When it is discovered they have 5 years to do the work. GARRETY stated that was correct. It is similar to taxation. The defendant is not entitled to any certain provisions.

REP. KEEDY stated it was strange to have 2 years and 5 years both in the bill. GARRETY replied that is the statute raised as defense.

There was no further discussion on House Bill 537.

HOUSE BILL 538 REP. HUENNEKENS stated this bill was to provide for a general 5 year statute of limitations to enforce the tax and license laws. EXHIBIT 5.

MIKE GARRETY, Department of Revenue, stated the case of Department of Revenue v. Caterpillar Company. The Caterpillar Company stated they were not doing business in the state so they should not file tax returns. The department had to first discover the company doing the business. An audit had to be performed. In cases like this it often takes over 2 years to complete the audit and legal matters involved; the statute of limitations should be raised to 5 years. The Department of Revenue is well prepared to litigate should the legislature pass this bill. He feels sure it will be challenged.

TERRY COSGROVE, Department of Revenue was the attorney involved in the Caterpillar case. If the department discovers the failure to file a return it only has two years to obtain the money from the company. COSGROVE stated this goes back to the 1930's. In 1945 the statute was repealed by enactment.

GARRETY stated there are special provisions to indicate excluding property tax to go beyond the five years.

There were no further proponents.

Exhibit 4

DEPARTMENT OF REVENUE

HOUSE BILL NO. 537

HB 537 provides for a 5 year statute of limitations for actions to enforce a statutory debt created by the payment of public assistance. The 5-year period begins to run when the debt arises unless fraud is involved. When fraud is present, the 5-year period commences upon discovery of the fraud. Basically, the 2-year period that is available for statutorily created debts under section 27-2-211, MCA, is not sufficient, and hence the Department of Revenue requests an additional 3 years, providing a 5-year period altogether.

Section Analysis

Section 1. Amends 27-2-211, MCA. Subsection (1) is amended (page 1, lines 21 through 24) to provide an exception from the 2-year statute of limitations for debts based upon payment of public assistance. A new subsection (4) (page 2, lines 10 through 14) is added to spell out the nature of the exception.

VISITORS' REGISTER

HOUSE Judiciary COMMITTEE

BILL 537 Date 2/5/81

SPONSOR Huennekens

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
—			X	
Mike Harrity	Helena	Dept. of Revenue	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 16, 1981

The meeting of the House Judiciary Committee was called to order by Chairman Kerry Keyser at 8:00 a.m. in Room 437 of the Capitol. All members were present except Rep. Conn and Rep. Daily, who were excused. Rep. Teague was absent. Jim Lear, Legislative Council, was present.

HOUSE BILL 703 REP. DUSSAULT, chief sponsor, stated this bill is to establish a preference for joint custody awards upon dissolution of marriage. This would insure the minor child flexibility and constant contact with both parents.

JOAN UDA stated about 100 years ago when a marriage was dissolved the child went with the father. That changed and the child went with the mother particularly if the child was young in years. We have reached an age where the dissolution of a marriage is quite common. Joint custody is something that will happen only if both parents ask for it. It severes all rights and obligations except to see the child is supported. The only other way is when abuse and neglect are involved.

The bill makes clear that once you are a parent you are always a parent.

VINCE MATULA supports this bill. EXHIBIT 1.

MARGARET STEWART has worked with child welfare in the SRS. One of the most damaging things is to separate a child from the parent. The child loses out in life. It has been established in a study in California that joint custody in which each parent has important decisions in the life of the child, the child is better off.

B. MOLONEUX stated about 40% of all marriages end in divorce. That statistic will increase to 55-60% in Montana. The impact of divorce places the child in a high risk area. It is not the divorce that hurts the children, it is the conditions surrounding the divorce that hurts the child. If the situation is absent of complications, anger and financial matters the child usually is not hurt drastically.

ALAN D. NICHOLSON read from EXHIBIT 2.

CAROL MITCHELL gave out EXHIBITS 3 and 4. MITCHELL stated in representing a client seeking a divorce the most traumatic thing is the decision of custody of the children. There have been over 100,000 kidnappings of children by the parent who does not have custody. Many times a parent won't visit the child because it is too painful, not because it is a financial burden.

There were no further proponents.

HOUSE BILL 537 REP. HUENNEKENS moved do pass.

REP. KEEDY had no objection to the intent of the bill but feels it is a bad way to draft legislation. It will make a mess out of the codes. REP. KEEDY moved to strike lines 2-11 and to put the change of statute of limitations on lines 10-14, page 2 into 53-4-248 and 40-5-221.

A roll call vote resulted. Those representatives voting yes were: CURTISS, HANNAH, MCLANE, ANDERSON, KEEDY and YARDLEY. Those representatives voting no were: KEYSER, SEIFERT, BEENETT, EUDAILY, MATSKO, ABRAMS, HUENNEKENS, SHELDEN and BROWN. The motion failed 9 to 6.

REP. HUENNEKENS moved do pass. The motion carried. (Those Representatives absent were CONN, IVERSON, TEAGUE and DAILY).

HOUSE BILL 538 REP. HUENNEKENS moved do pass. This would allow the state to collect taxes from companies out of the state who are doing business in the state. It would be worthwhile to be able to go back five years.

REP. BROWN moved to strike the remainder of line 9 following "PERIODS" through "APPLICATION" on line 10 and the title to be so amended. Following "1980" on page 4, lines 3 through 5, strike the remainder of line 3 through "statute" on line 5.

REP. KEEDY stated that would include only taxpayers who have not completed a return. On that basis, REP. KEEDY objects to the amendment. REP. HUENNEKENS replied without reference to the five years the department will not be able to obtain the money due.

The amendment passed with the following representatives voting no: YARDLEY, SHELDEN, KEEDY, HUENNEKENS and EUDAILY.

REP. HUENNEKENS moved do pass as amended.

REP. HANNAH was against the motion. It is more government regulations and control. REP. CURTISS agreed. It will require each individual to keep records for everything forever.

REP. HUENNEKENS stated if we do not have involvement on this matter the individual income tax and corporate income tax are not producing equity for taxpayers. If there is no equity there is no justice.

A roll call vote resulted on the motion of do pass. Those voting yes were: ANDERSON, HUENNEKENS, SHELDEN, KEEDY, YARDLEY and BROWN.

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 535	3/03/81	3/16/81	3/17/81				3/17/81		
HB 536	3/03/81	3/16/81	3/25/81				3/25/81		
HB 537	3/03/81	3/16/81	3/17/81				3/17/81		
HB 538	3/04/81	3/19/81	3/23/81					3/23/81	
HB 598	2/18/81	3/05/81	3/05/81					3/05/81	
HB 612	3/04/81	3/19/81	3/21/81						3/21/81
HB 621	2/18/81	3/16/81	3/17/81					3/17/81	
HB 626	3/03/81	3/10/81	3/16/81						3/16/81 (amende
HB 656	2/23/81	3/05/81	3/25/81	tabled					
HB 678	3/03/81	3/19/81	3/21/81				3/21/81		
HB 689	3/03/81	3/10/81	3/24/81					3/24/81	
HB 690	3/03/81	3/10/81	3/14/81				3/14/81		
HB 698	3/04/81	3/18/81	3/21/81				3/21/81		
HB 703	3/04/81	3/18/81	3/25/81					3/25/81	
HB 711	3/04/81	3/18/81	3/18/81				3/18/81		
HB 713	3/04/81	3/17/81	3/21/81				3/21/81		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 16, 1981

The forty-fourth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 621:

TO DEFINE AND PROHIBIT COMPUTER-RELATED CRIME.

Yielding the chair to Vice Chairman O'Hara for the hearing of this bill, Senator Anderson presented the bill. He read from an article written by Sylvia Porter, appearing in THE INDEPENDENT RECORD (attached Exhibit A), relative to computer crime, and pointed out that many of these crimes were never reported because doing so would jeopardize public trust in institutions such as banks and savings and loan companies. Rather than reporting such crimes, these companies take out insurance to cover the losses, and this forces up the cost of the services they provide.

Jim Hughes, representing Mountain Bell, testified in support of the bill as shown on his attached testimony sheet.

George Bennett, representing the Montana Bankers Association, testified in support of the bill and said that it was patterned after federal legislation.

Rep. Meyer spoke as chief sponsor of the bill, saying that he would close the discussion. He said that the world is becoming a computer world, and that this legislation is needed.

Senator Mazurek asked Marge Johnson, representing Mountain Bell, if "may" on line 10 of page 20 should not be changed to "shall". She said that this change would be all right with her.

Senator O'Hara asked if an accounts receivable record was dumped out of a computer, could it ever be recovered. Marge Johnson replied that a large cost would be involved in retrieving these records, and, in the cases where the records were stored only in the computer, it would not be possible to recover them at all.

Senator Berg questioned the harshness of the penalty as

outlined on page 19 under subsection (2), as being at the rate of up to two and one-half times the value of the theft.

CONSIDERATION OF HOUSE BILL 537:

TO PROVIDE A 5-YEAR STATUTE OF LIMITATIONS FOR ACTIONS BASED ON A STATUTORY DEBT CREATED BY THE PAYMENT OF PUBLIC ASSISTANCE.

Rep. Huennekens, Billings, presented the bill and handed out a summary of it (attached Exhibit B). He said that he felt the present system encourages welfare fraud because of the two-year statute of limitations, so the statute of limitations should be changed to the proposed five years from the date of detection of the fraud.

There were no proponents, opponents, or questions from the committee.

CONSIDERATION OF HOUSE BILL 536:

TO AMEND THE UNIFORM PARENTAGE ACT.

Rep. Huennekens presented the bill as a method of helping a child determine parentage by bringing action when he has reached his age of majority. Rep. Huennekens said that the bill would not provide harrassment against the parent, but would allow a child to try to establish his paternity by taking advantage of new methods of tissue analysis, etc.

Senator Mazurek asked Mike Garrity, of the Department of Revenue, if the department's use of this legislation would be to force the father to pay support if he were financially able to do so. Mr. Garrity agreed that this would be their application. Senator Mazurek feared that this might leave the door open for a "disinterested father" to later dispute an adoption of his child. He suggested that for this reason the statute of limitations in these cases should be extended only to legal actions brought by the child, but no one else.

CONSIDERATION OF HOUSE BILL 535:

TO AMEND UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY REQUEST THE PROSECUTING ATTORNEY TO REPRESENT THE SUPPORT OBLIGEE.

Rep. Huennekens presented the bill.

Mike Garrity, of the Department of Revenue, speaking in

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 16, 1981

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

Exhibit B

DEPARTMENT OF REVENUE

HOUSE BILL NO. 537

HB 537 provides for a 5 year statute of limitations for actions to enforce a statutory debt created by the payment of public assistance. The 5-year period begins to run when the debt arises unless fraud is involved. When fraud is present, the 5-year period commences upon discovery of the fraud. Basically, the 2-year period that is available for statutorily created debts under section 27-2-211, MCA, is not sufficient, and hence the Department of Revenue requests an additional 3 years, providing a 5-year period altogether.

Section Analysis

Section 1. Amends 27-2-211, MCA. Subsection (1) is amended (page 1, lines 21 through 24) to provide an exception from the 2-year statute of limitations for debts based upon payment of public assistance. A new subsection (4) (page 2, lines 10 through 14) is added to spell out the nature of the exception.

DATE March 16, 1981

COMMITTEE ON Judiciary

HB 761
HB 621 HB 536
HB 537 HB 535

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppos
William L. Romine	clerk & Recorders	HB.761	Amend.	
Susan Good	Mt Hon. Ed. Assoc	HB536		
[illegible]	Mountain Bell	HB621	X	
Jim Hughes	MOUNTAIN BELL	HB621	X	
[illegible]	Mont. Bldg. Assn	HB621	X	
[illegible]	[illegible]			
Michael H. Hardy	Dept. of Revenue	HB.535 HB.536 HB.537	X	
Helen Lydick	Clerk & Recorders	HB761	Amend	
Joanne Lires	" "	HB761	"	
Merrill A. Klundt	" "	HB761	"	

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 17, 1981

The forty-fifth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 713:

TO ADOPT THE UNIFORM ARBITRATION ACT AND TO CONFORM OTHER STATUTORY PROVISIONS THERETO.

Rep. Fabrega, House District 44, Great Falls, presented the bill, saying it only applies to commercial arbitration.

John McCabe supported the bill as legal counsel for the National Conference of Commissioners on Arbitration in Cnicago. He said that the key section of the bill is Section 4, and he said that the difference between existing law and this bill is that under current law arbitration cannot be agreed upon in contract before the dispute arises. This bill would allow this, and would also allow enforcement of arbitration in a court of law, vacation of awards should an arbiter not do his job, and appeals from the arbitration.

Bill Corbett, from the faculty of the law school in Missoula, supported the bill, saying that currently the only solution is time-consuming litigation.

Chad Smith, representing the Montana School Board Association, added his support to the bill because of the building delays and added costs that result from drawn-out disputes.

H. S. Hanson, representing the Montana Technical Council, supported the bill for previously given reasons.

J. C. Weingartner supported the bill on behalf of the State Bar of Montana.

Don Smith, Great Falls attorney, supported the bill as shown on his attached testimony sheets, speaking of his experience with IFG Leasing Co.

Leland Walker, representing the American Society of Civil Engineers, Northern Testing Laboratories, supported the bill,

private attorney before he turned to teaching. He added that he has made a specialty of studying the small claims courts and their satisfactory record. He described such courts as the ones which really do the most for the common people, who, in effect, lose their right to a court hearing when these courts are eliminated. He said that the small claims courts were recently eliminated because present law dictates that there be no trial de novo in district court. He said that a simple amendment saying there must be a right to a trial de novo in the district court would remedy the situation. He quoted statistics indicating a definite trend toward increasing use of the small claims courts.

John Maynard agreed with Mr. Alexander's remarks, and said that the people of Montana find this type of court very important.

Senator Halligan suggested that the issue be started at once if that was the desire of the committee, and Senator Anderson said that he would go to the leadership in the Senate with the prepared bill drafting request, and would report back to the committee.

Senator Anderson scheduled an executive meeting for this upcoming Saturday, and for Monday and Tuesday of next week.

DISPOSITION OF HOUSE BILL 396:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 535:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 537:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 621:

Senator Mazurek moved that the bill be amended twice, changing "may" to "shall", as shown on the attached Committee Report, and his motion passed unanimously. He then moved that the bill be CONCURRED IN AS AMENDED, and this motion passed unanimously.

DISPOSITION OF HOUSE BILL 208:

Senator Crippen moved that the bill BE NOT CONCURRED IN, and his motion passed over Senator S. Brown's opposition.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date March 17, 198

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 17, 1931

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 537
HUENNEKENS (TVEIT)

Respectfully report as follows: That HOUSE Bill No. 537

~~RE-PASS~~
BE CONCURRED IN

Mike Anderson
Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 537

INTRODUCED BY HUENNEKENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A 5-YEAR STATUTE OF LIMITATIONS FOR ACTIONS BASED ON A STATUTORY DEBT CREATED BY THE PAYMENT OF PUBLIC ASSISTANCE; AMENDING SECTION 27-2-211, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-2-211, MCA, is amended to read:

"27-2-211. Actions to enforce penalty or forfeiture or other statutory liability. (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved, an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud."

-End-

REFERENCE BILL